

therefore not subject to the control of the employer and do not vary with the fluctuations in business. In an arrangement of this kind, if the employer required the employee to work on Saturday in a week in which he was scheduled for work only on the Monday through Friday schedule, he would be paid at his regular rate for all the Saturday hours in addition to his salary.

#### PRIZES AS BONUSES

##### **§ 778.330 Prizes or contest awards generally.**

All compensation (except statutory exclusions) paid by or on behalf of an employer to an employee as remuneration for employment must be included in the regular rate, whether paid in the form of cash or otherwise. Prizes are therefore included in the regular rate if they are paid to an employee as remuneration for employment. If therefore it is asserted that a particular prize is not to be included in the regular rate, it must be shown either that the prize was not paid to the employee for employment, or that it is not a thing of value which is part of wages.

##### **§ 778.331 Awards for performance on the job.**

Where a prize is awarded for the quality, quantity or efficiency of work done by the employee during his customary working hours at his normal assigned tasks (whether on the employer's premises or elsewhere) it is obviously paid as additional remuneration for employment. Thus prizes paid for co-operation, courtesy, efficiency, highest production, best attendance, best quality of work, greatest number of overtime hours worked, etc., are part of the regular rate of pay. If the prize is paid in cash, the amount paid must be allocated (for the method of allocation see § 778.209) over the period during which it was earned to determine the resultant increase in the average hourly rate for each week of the period. If the prize is merchandise, the cost to the employer is the sum which must be allocated. Where the prize is either cash or merchandise, with the choice left the employee, the amount to be allocated is the amount (or the cost) of the actual prize he accepts.

##### **§ 778.332 Awards for activities not normally part of employee's job.**

(a) Where the prize is awarded for activities outside the customary working hours of the employee, beyond the scope of his customary duties or away from the employer's premises, the question of whether the compensation is remuneration for employment will depend on such factors as the amount of time, if any, spent by the employee in competing, the relationship between the contest activities and the usual work of the employee, whether the competition involves work usually performed by other employees for employers, whether an employee is specifically urged to participate or led to believe that he will not merit promotion or advancement unless he participates.

(b) By way of example, a prize paid for work performed in obtaining new business for an employer would be regarded as remuneration for employment. Although the duties of the employees who participate in the contest may not normally encompass this type of work, it is work of a kind normally performed by salesmen for their employers, and the time spent by the employee in competing for such a prize (whether successfully or not) is working time and must be counted as such in determining overtime compensation due under the Act. On the other hand a prize or bonus paid to an employee when a sale is made by the company's sales representative to a person whom he recommended as a good sales prospect would not be regarded as compensation for services if in fact the prize-winner performed no work in securing the name of the sales prospect and spent no time on the matter for the company in any way.

##### **§ 778.333 Suggestion system awards.**

The question has been raised whether awards made to employees for suggestions submitted under a suggestion system plan are to be regarded as part of the regular rate. There is no hard and fast rule on this point as the term "suggestion system" has been used to describe a variety of widely differing plans. It may be generally stated, however, that prizes paid pursuant to a bona fide suggestion system plan may be excluded from the regular rate at